APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Grant.

GRISH CHANDRA (ONE OF THE DEFENDANTS) *v.* KASHISAURI DEBI (PLAINTIFF) and BROJO SUNDARI DEBI (PROFORMA DEFENDANT).* 1886 *April* 15.

Transfer of Property Act (IV of 1882), s. 135—Transferee of a claim for smaller value—Recovery of full amount of debt.

It is not the object of s. 135 of the Transfer of Property Act absolutely to prevent a transferee, who has purchased a claim at a smaller value, from recovering the full amount of the debt due from the debtor.

BROJO SUNDARI DABI claimed the sum of Rs. 540 as her maintenance allowance under the terms of a registered *ekrar* executed in her favour by her step-son, Grish Chandra Moitra. She sold her claim to Kashisauri Debi for a consideration of Rs. 344. The transferee brought a suit against Grish Chandra for the recovery of the full amount of Rs. 540 as principal and Rs. 110 as interest. The defendant in his written statement denied the title of the purchaser and pleaded payment to Brojo Sundari.

The Munsiff dismissed the suit on the ground of a flaw in the deed of sale. The District Court decreed the claim. On appeal to the High Court, it was contended that the plaintiff was not entitled to recover anything beyond the amount for which she purchased the claim.

Baboo *Lal Mohun Das* for the appellant.

Baboo *Ishwar Chunder Chuckerbutty* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) was as follows :—

MITTER, J.—The only point which we think it necessary to notice is that raised in the third ground of the petition of appeal, *viz.*, "that the plaintiff is not entitled to recover anything beyond the amount for which she purchased the claim."

*Appeal from Appellate Decree No. 2338 of 1885 against the decree of G. G. Dey, Esq., Judge of Pubna and Bogra, dated the 10th of July 1885, reversing the decree of Baboo Bepin Beharee Mukherji, Munsiff of Pubna, dated the 16th of February 1885.

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The plaintiff is the transferee of a debt due to one Brojo Sundari Debi from the appellant before us. The claim is to recover Rs. 650, made up of Rs. 540 principal and Rs. 110 interest. This actionable claim was admittedly purchased by the plaintiff for Rs. 344; and it is contended before us for the first time in second appeal that, under s. 135 of the Transfer of Property Act, which applies to the transaction under which the plaintiff became entitled to this actionable claim, the plaintiff is only entitled to recover the price which she paid, and the incidental expenses of the sale, although the third ground does not admit that she is entitled to those expenses.

We are of opinion that this contention is not valid. Section 135 does not say that a transferee is *not entitled* to recover from the debtor the full amount of the debt due from the latter. It simply says that the *debtor would be wholly discharged by paying* to the buyer the price and the incidental expenses of the sale with interest on the price from the date the buyer paid it. In this case the debtor did not pay to the plaintiff the amount mentioned in the section, nor is it alleged that he offered to pay that amount, and that the plaintiff refused to accept it. The section, therefore, is not applicable to the present case. Clause (*d*) of that section also points out that, even if the debtor had offered to pay the amount mentioned in the section after the decree in the lower Court, he would not have been discharged, because that clause says that the former part of the section will not apply where the judgment of a competent Court has been delivered confirming the claim. We are, therefore, of opinion that this objection is not valid.

We dismiss the appeal with costs.

K. M. C.

Appeal dismissed.